Department of Finance

News Release

Immediate release

Ottawa, January 9, 2008
2008-002

Government of Canada Confirms Membership of Panel on Crown Share Adjustment Payments

The Honourable Jim Flaherty, Minister of Finance, today announced that the Government of Canada has named the Honourable Lorne O. Clarke, Q.C., as Chair of the Panel on Crown Share Adjustment Payments. Minister Flaherty also confirmed that Dr. Brian Lee Crowley will act on the Panel as the Government of Canada's appointee.

The Panel was announced on October 10, 2007, by Prime Minister Stephen Harper and Nova Scotia Premier Rodney MacDonald to accelerate resolution of the outstanding questions concerning Crown Share Adjustment Payments to Nova Scotia.

Mr. Clarke is a former Chief Justice of the Nova Scotia Supreme Court, with a distinguished history of public service.

Dr. Crowley is the founding President of the Atlantic Institute for Market Studies and current Clifford Clark Visiting Economist at the Department of Finance.

The Government of Nova Scotia has appointed Dara L. Gordon, Q.C., a partner at McInnes Cooper in Halifax, as its Panel nominee.

"Given the depth of their understanding of the complex public policy issues involved, their long record of public service, as well as their substantial contributions to Atlantic Canada, the members named to this Panel are ideally suited for this task," stated Minister Flaherty.

"All three members of the Panel are dedicated to public service and have the skills necessary to find a solution to this issue," added the Honourable Richard Hurlburt, Nova Scotia's Minister of Energy. "We wish them well in their work and look forward to their report."

As specified by Prime Minister Harper and Premier MacDonald, the Panel will examine the long-standing technical dispute over the value of federal Crown Share Adjustment Payments to Nova Scotia under the original 1986 Atlantic Accord, with a view to facilitate the development of an approach agreeable to both governments. The Panel will

report back by March 15, 2008. The Panel's terms of reference, as well as a technical backgrounder on Crown Share Adjustment Payments, are attached.

Today's announcement builds on the *Budget and Economic Statement Implementation Act, 2007* (Implementation Act), which received Royal Assent on December 14, 2007, and set out another key element of the October 10 announcement. The Implementation Act provides a guarantee that Nova Scotia will be able to opt into the new Equalization arrangement without risking any of the benefits under the 2005 Atlantic Accord.

Biographical information on each of the Panel members is attached.

For further information, media may contact:

Chisholm Pothier
Press Secretary
Office of the Minister of Finance
613-996-7861

David Gamble
Media Relations
Department of Finance
613-996-8080

www.fin.gc.ca

If you would like to receive automatic e-mail notification of all news releases, please visit the Department of Finance website at www.fin.gc.ca/scripts/register_e.asp

Panel on Crown Share Adjustment Payments

Terms of Reference – October 10, 2007

Given:

- That the Government of Canada and the Government of Nova Scotia signed an Accord with respect to the management of offshore petroleum resources on August 26, 1986 (the *Canada-Nova Scotia Offshore Petroleum Resources Accord*);

- That contained in that Accord was an article (Article 45) providing for the payment of Crown Share Adjustment Payments to Nova Scotia by Canada, once the province had demonstrated that certain conditions were met;

- That the Parliament of Canada passed legislation on July 21, 1988 to implement the 1986 Accord (*Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*);

- That Part VIII of the 1988 Act established Crown Share Adjustment Payments, which to become effective, require the enactment of regulations that are acceptable to the Governments of Canada and Nova Scotia;

- That these payments would not in any manner reduce Nova Scotia's equalization payments, including the application of the fiscal capacity cap, in any particular year, now or in the future;

- That Canada and Nova Scotia have not been able to agree on the value of Crown Share Adjustment Payments because of technical differences of opinion with respect to the interpretation and appropriate methodology for these payments; and

- That there would be a benefit from an independent review to facilitate an approach to valuing Crown Share Adjustment Payments that is agreeable to both governments.

1. A Panel on Crown Share Adjustment Payments will be established.

2. Membership in the Panel will be determined in the following way:

   - The Government of Nova Scotia will appoint one panellist;

   - The Government of Canada will appoint one panellist; and

   - The appointed panellists shall jointly select a third panellist who will act as Chair. If the Panel members cannot agree on the third member, the appointment of the third member will be made by the Chief Justice of the Nova Scotia Supreme Court.

3. The Panel will be asked to examine and provide recommendations to the Governments of Canada and Nova Scotia on:

   - The method of calculation of the federal revenue entitlement derived from the production in the offshore area required to meet the Offshore Revenue Threshold ($200 million);
   - The method of calculation of the rate of return in respect of a particular offshore project, as referenced in the 1988 Act, that the province would be required to demonstrate that it would achieve for it to have acquired a Crown Share with respect to that project;
   - The method of calculation of the threshold rate of return, in particular the calculation of the "average annual cost to the Province of borrowing money", as referenced in the 1988 Act, that is to provide a benchmark against the project rate of return;
   - The determination of "deemed profit", as referenced in the 1988 Act;
   - The reduction for fiscal incentives as referenced in the 1988 Act; and
   - The time and manner of payment, as referenced in the 1988 Act.

4. Given this methodology, the Panel will also provide guidance on:

   - What the range of value of the Crown Share Adjustment Payments is to date for Nova Scotia; and
   - What the range of present value of future payments of Crown Share Adjustment Payments to Nova Scotia is with respect to current and/or potential offshore petroleum projects (e.g., including those that have significant discovery licences).

5. In carrying out its mandate, the Panel will receive submissions from the Government of Canada and the Government of Nova Scotia, concerning their respective positions on the components of the Crown Share Adjustment Payments that are to be prescribed by regulations in accordance with Part VIII of the 1988 Act.

6. The Panel will report with its recommendations by March 15, 2008.

7. Within 90 days of the Panel reporting, the Government of Canada will produce draft regulations in accordance with the Panel's recommendations and Part VIII of the 1988 Act. The Government of Nova Scotia shall review and approve the regulations in accordance with the 1988 Act and the Panel's recommendations.

Backgrounder

Crown Share Adjustment Payments

The "Crown share" was established with the 1980 National Energy Program (NEP), which gave the federal government the right to buy an ownership interest (a "Crown share") in privately owned oil and gas projects taking place on Canada lands, including those offshore from Nova Scotia. In 1982, Canada gave the province the right to acquire a portion of the federal Crown share.

While the Crown share was abolished with the dismantling of the NEP in the mid-1980s, Canada agreed under the 1986 *Canada-Nova Scotia Offshore Petroleum Resources Accord* (1986 Accord) to compensate the province for the loss of the potential profits that Nova Scotia could have earned through the 1982 provision.

In essence, once specific conditions have been met, Nova Scotia would be entitled to receive payment from Canada equal to 75 per cent of the notional profits that the province would have earned that year from a project, had it been able to acquire a Crown share interest. The province would receive payment once:

a. Federal revenues from Nova Scotia offshore petroleum production exceed a pre-determined Offshore Revenue Threshold of $200 million;

b. Nova Scotia demonstrates that it would have "invested" in a Crown share, e.g. the rate of return in respect of a particular offshore project would meet a pre-determined rate of return threshold; and

c. Nova Scotia's fiscal capacity is below the national average for the fiscal year in question.

While these conditions are set out in the Accord and its implementing legislation, the technical regulations necessary to determine the entitlement for, and the amount of, payments were never put in place. The regulations must be agreeable to both governments before they are put in place.

The governments have agreed to the appointment of a joint, independent three-member Panel to make recommendations concerning the calculation of the value of federal Crown Share Adjustment Payment obligations, with a view to facilitating the development of an approach agreeable to both governments.

Each government has appointed one member, who jointly selected a third member as Chair. The Panel will be asked to report its recommendations to both governments by March 15, 2008.

Biographical Information

The Honourable Lorne O. Clarke, Q.C.

Mr. Clarke was educated at both Dalhousie (B.A. and LL.B.) and Harvard (LL.M) universities, and was admitted to the bar of Nova Scotia in 1953. He has served on a number of professional community organizations, including the Canadian Bar Association, the Nova Scotia Barristers' Society, the National Academy of Arbitrators and the Nova Scotia Branch of the Canadian Mental Health Association. He was appointed Queen's Counsel (Q.C.) in 1969. In 1981, he was appointed a Justice of the Supreme Court of Nova Scotia (Trial Division) and not long after became the province's 20th Chief Justice as well as Justice of the Court of Appeal.

Following retirement from the Court in 1998, he was awarded an honorary membership in the Canadian Bar Association, Commissionaires Nova Scotia and the Halifax Chamber of Commerce, as well as an honorary presidency of the Nova Scotia Barristers' Society. He has also been appointed the Commissioner of an Inquiry on Remuneration of Elected Public Officials in Nova Scotia and also served as the Chair of the Swissair 111 Planning and Co-ordination Secretariat. He has received a number of honours, which include Honorary Doctorates in Law from Dalhousie University (1986) and Saint Mary's University (2005). He was named an Officer of the Order of Canada (O.C.) in 1999 and was given membership in the Order of Nova Scotia (O.N.S.) in 2002.

Dr. Brian Lee Crowley

Dr. Crowley is the current Clifford Clark Visiting Economist at the Department of Finance, and founding President of the Atlantic Institute for Market Studies, Atlantic Canada's pre-eminent public policy think tank.

He has published many books and papers on a wide range of public policy issues and has taken a leadership role in work on equalization, health care, Canada-U.S. relations, public school performance and accountability, Employment Insurance reform, natural resources and public finances, constitutional reform and regional development policy. He has twice won the Sir Antony Fisher Prize for excellence in think tank publications. A prominent member of the international think tank community, he is a former Salvatori Fellow at the Heritage Foundation in Washington, and he serves as a director or member of the research advisory boards of think tanks in Winnipeg, Paris, Lagos and Bangor, Maine. He is also a former President of the Atlantic Provinces Economic Council.

In recognition of his work on health care policy, Dr. Crowley was named to the Alberta Premier's Advisory Council on Health (the Mazankowski Committee). During the Meech Lake negotiations he represented the Government of Manitoba. The Government of Nova Scotia named him Secretary of the Nova Scotia Working Committee on the Constitution (the Kierans Committee) and he subsequently acted as a negotiator for that province in the Charlottetown Accord negotiations.

A native of Vancouver, Dr. Crowley holds degrees from McGill University (B.A. Hons.) and the London School of Economics (M.Sc. Hons. and Ph.D. in political economy) and has taught politics, economics and philosophy at numerous universities, including Dalhousie University, the University of Manitoba, the University of Winnipeg, the Collège universitaire de Saint-Boniface, the City of London Polytechnic and the Université d'été d'Aix-en-Provence. He is also widely regarded as a gifted communicator on complex public policy questions. He is a former member of the Editorial Board of *The Globe and Mail*, a columnist in numerous Canadian newspapers, including *La Presse*, and a frequent commentator on CBC, Radio-Canada, CTV and many other electronic media outlets.

Ms. Dara L. Gordon, Q.C.

Ms. Gordon is a partner and member of the board of directors at Atlantic Canada's largest law firm, McInnes Cooper. She is also a former chair and a member of the firm's corporate finance group and energy and natural resources group. She was lead counsel for Nova Scotia in the negotiations for the 2005 Atlantic Accord. She has also acted as lead counsel on other major public and private sector projects having significant legal and financial implications, including representing the Government of Canada on the financing and construction of the Confederation Bridge.

She has served on the boards of the Nova Scotia Barristers' Society, the Nova Scotia Law Foundation and the Dalhousie Law School Alumni Association, and is a member of the Canadian Council for Public-Private Partnerships. She has also served as the Acting Chair of the Nova Scotia Gaming Corporation.

She was born in Halifax and lives in Wolfville, Nova Scotia. She was educated at Saint Mary's University (B. Comm. 1972) and at Dalhousie University (LL.B. 1979). She was admitted to the bar of Nova Scotia in 1979 and was appointed Queen's Counsel (Q.C.) in 1998.